आयकर अपीलीय अधिकरण, 'ए' न्याय पीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL , 'A' BENCH, CHENNAI
श्री वी. दुर्गा राव, न्यायिक सदस्य एवं श्री जी. मंजुनाथ , लेखा सदस्य के समक्ष
BEFORE SHRI V.DURGA RAO , JUDICIAL MEMBER
AND SHRI G.MANJUNATHA, ACCOUNTANT MEMBER

आयकर अपील सं./**I.T.A.No.1882/Chny/2018**

(निर्धारणवर्ष / Assessment Year: 2013-14)

Deputy Commissioner of Income Tax, Corporate Circle-1, Coimbatore.	Vs	M/s. Indo Shell Automative Systems India Pvt. Ltd. A-9, SIDCO Industrial Estate, Kurichi,Coimbatore-641 021.
		PAN: AABCI 3140D
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओरसे/ Appellant by	:	Mr. D.Manoj Kumar,CIT
प्रत्यर्थी की ओरसे/Respondent by	:	Mr. Arjunraj, C A for S.Sridhar Advocate

सुनवाई की तारीख/Date of hearing	:	31.08 2021
घोषणा कीतारीख /Date of Pronouncement	:	08.09.2021

आदेश / O R D E R

PER G.MANJUNATHA, AM:

This appeal filed by the Revenue is directed against the order passed by the learned CIT(A)-1, Coimbatore dated 02.03.2018 and pertains to assessment year 2013-14.

2. The Revenue has raised following grounds of appeal:-

"1) The order of the ld. CIT(A), Coimbatore is against the facts and circumstances of the case and is erroneous by law.

2) The learned CIT(A) has erred in law by holding that the advances will not come under the provision of section 2(22)(e) of the Act.

3) The learned CIT(A) erred in law in giving a finding that the advances were made by a company to a sister concern and adjusted the dues for job work done by the sister concern. However, the learned CIT(A) failed to state how the liabilities paid by the assessee company on behalf of the sister concern

would tantamount to a commercial transaction thereby not attracting the provisions of section 2(22)(e) of the I.TAct. 1961.

4) The learned CIT(A) has erred in law in not considering the following judgements of the Hon'ble Supreme Court:

(a) In Kantilal Manilal Vs. CIT [1961] cited in 41 ITR 275 (SC), the Supreme Court held that section 2(22) deals with various types of cases and creates a fiction by which certain receipts or parts thereof are treated as dividend for the purpose of levy of income-tax.

(b) In Tarulata Shyam vs. CIT [1977] cited in 108 ITR 345 (SC), the Hon'ble Supreme Court held that under section 2(22) the liability to tax attaches to any amount taken as loan by the shareholder from a controlled company to the extent it possesses accumulated profits a the moment the loan is borrowed and it is immaterial whether the loan is repaid before the end of the accounting year or not.

5) The learned CIT(A) erred in law by allowing the assessee's appeal on the issue of disallowance of belated payment of employee's contribution of ESI and PF amount by merely relying on the decision rendered by the Hon'ble Supreme Court in the case of Prl.CIT, Jaipur vs. Rajasthan State Beverages Corporation Ltd , cited in [2017] 250 Taxman 16. However, the Hon'ble Supreme Court dismissed the SLP filed by the Department against the order of the Rajasthan High Court (citation: [2017] 84 taxmann.com 173). The Rajasthan High Court while deciding the case in favour of the assessee merely relied on its own decision rendered in the case of CIT v. State Bank of Bikaner & Jaipur cited in [2014] 363 ITR 70/43 taxmann.com 411 and had no occasion to consider the Board's Circular No.22/2015 dated 17.12.2015. Hence these case laws are not applicable to the present set of facts of the assessee's case.

6) The learned CIT(A) failed to note that the jurisdictional High Court's decision in the case of CIT vs. Industrial Security and Intelligence Industries India (Pvt) Ltd that was relied upon by the learned CIT(A) was rendered on 24 July, 2015 which is prior to issue of circular No. 22/2015 dt. 17.12.2015 and the Hon'ble Jurisdictional High Court had no occasion to consider the circular No.22/2015.

7) For these and other grounds that may be adduced at the time of hearing, the order of the ld. CIT(A), may be cancelled and that of the Assessing Officer be restored."

3. Brief facts of the case are that the assessee company is engaged in the business of contract manufacturing to cater needs of M/s. Indo Shell Mould Ltd. The assessee has filed its return of income for assessment year 20013-14 on 30.11.2013 declaring total income of Rs.14,97,870/-. The assessment for the impugned assessment year was completed u/s.143(3) of the Income Tax Act, 1961, on 28.03 2016 and determined total income of Rs.4,96,29,142/ by making additions towards deemed dividend u/s 2(22)(e) of the I.T. Act, 1961 for Rs.4,75,00,481/- and disallowance of belated payment of employees contribution to PF & ESI amounting to Rs.6,30,791/-. The assessee carried the matter in appeal before first appellate authority. The learned CIT(A) for the reasons recorded in his appellate order deleted additions made by the Assessing Officer towards deemed dividend u/s.2(22)(e) of the Act and belated payments of PF & ESI u/s.36(1)(va) r.w.s 43B(b) of the Act. Aggrieved by the learned CIT(A) order, the revenue is in appeal before us.

4. The first issue that came up for consideration from ground No.2 to 4 of revenue appeal is deletion of additions made towards loans & advances u/s.2(22)(e) of the Income Tax Act, 1961. The facts with regard to impugned dispute are that assessee company and M/s. Indo Shell Mould Ltd. are related concerns. The assessee company has paid a sum of Rs.4,75,00,481/- towards various expenses including excise duty and service tax, salaries & wages, TDS payment and bank charges on behalf of M/s Indo Shell Mould Ltd. and debited to their account. The Assessing Officer has treated debit balance in the name of M/s. Indo Shell Mould Ltd. as loans & advances by a company to shareholder and invoked provisions of section 2(22)(e) of the I.T.Act, 1961, and made additions towards advances in the name of M/s. Indo Shell Mould Ltd. as deemed dividend u/s.2(22)(e) of the Act.

5. The learned DR submitted that the learned CIT(A) has erred in deleting additions made by the Assessing Officer towards advances u/s.2(22)(e) of the Act, without appreciating fact that liabilities paid by the assessee company on behalf of sister concern would tantamount to loans or advances, which

attracts provisions of section 2(22)(e) of the Act. The DR further referring to the decision of Hon'ble Supreme Court in the case of Kantilal Manilal Vs.CIT (1961) 41 ITR 275 and the decision of Tarulata Shyam vs.CIT (1977) 108 ITR 345 submitted that amount taken as loan by shareholder from a controlled company to the extent it possesses accumulated profit comes under the provisions of section 2(22)(e) of the Act .

6. The learned AR for the assessee, on the other hand, strongly supporting order of the learned CIT(A) submitted that transactions between assessee and M/s. Indo Shell Mould Ltd. is normal commercial transaction between two related companies and further, the assessee being contract manufacturer for M/s. Indo Shell Mould Ltd. in terms of agreement between the parties dated 25.07.2011 has made payment of certain expenses on behalf of M/s. Indo Shell Mould Ltd. and debited to their account. Further, said advance has been subsequently adjusted against receivables from the company. Therefore, same cannot be treated as loans or advances to invoke provisions of section 2(22)(e) of the Act. The learned AR further submitted that Assessing Officer has

completely erred in invoking provisions of section 2(22)(e) of the Act, because if at all, said payment is loans or advances, same needs to be considered in the hands of shareholders or concern in which shareholder is having beneficial interest, but same cannot be added in the hands of assessee u/s.2(22)(e) of the Act. He further submitted that this issue is also covered in favour of the assessee by the decision of the Tribunal in assessee's own case for assessment year 2012-13 in ITA No.1691 &1973/Chny/2015 dated 03.10.2018.

7. We have heard both the parties, perused material available on record and gone through orders of the authorities below. As per he provisions of section 2(22)(e), any payment by a company to a shareholder in the nature of loans or advances is deemed to be dividend, if such shareholder holds more than 10% beneficiary shareholding in the company. In order to invoke provisions of section 2(22)(e) of the Act, there should be a payment by a company to the shareholder in the nature of loans or advances, then in the hands of shareholder, said loans or advances shall be deemed to be deemed dividend to the extent of accumulated profits of the company. In this

case, on perusal of details available on record, we find that the assessee has paid certain expenses on behalf of M/s. Indo Shell Mould Ltd. and the same has been adjusted against receivables from them. If at all, transaction between assessee and M/s. Indo Shell Mould Ltd. is in the nature of loans or advances, then same needs to be considered in the hands of M/s. Indo Shell Mould Ltd. as deemed dividend u/s.2(22)(e) of the Act. In this case, the Assessing Officer has invoked provisions of section 2(22)(e) of the Act, in the hands of company, but not in the hands of shareholder. Therefore, on this count, additions made by the Assessing Officer cannot be sustained.

8. Be that as it may, fact remains that the assessee is having exclusive contract manufacturing agreement with M/s. Indo Shell Mould Ltd. As per agreement between the parties dated 25.07.2011 M/s. Indo Shell Mould Ltd. has paid a sum of Rs.20 crores as interest free advance for utilizing entire capacity to fulfill its needs. Since there is a commercial understanding between the assessee and M/s. Indo Shell Mould Ltd., the assessee has paid certain expenses of M/s.

Indo Shell Mould Ltd. on their behalf and debited same to the account of M/s. Indo Shell Mould Ltd. Further, said amount has been adjusted against receivables from them. From the above, it is very clear that transaction between the assessee and M/s. Indo Shell Mould Ltd. is a clear commercial transaction in the normal course of business of the assessee. Therefore, in our view, same is outside scope of provisions of section 2(22)(e) of the Act. This view is supported by the decision of Hon'ble Delhi High Court in the case of CIT vs. Creative Dyeing & Printing Pvt.Ltd, 318 ITR 476, where it was clearly held that advances made by a company to a sister concern and adjusted against dues for job work done by sister company is outside scope of provisions of section 2(22)(e) of the Act. This legal position has been accepted by CBDT and issued circular No.19/2017 dated 12.06.2017 and clarified that trade advances which are in the nature of commercial transactions would not fall within the ambit of word 'advance' u/s.2(22)(e) of the Act. Further, this issue is also covered in favour of the assessee by the decision of the Tribunal in assessee's own case for assessment year 2012-13 in ITA No. 1691 & 1973/Chny/2015 dated 03.10.2018, where under identical set of facts and

identical transaction between the assessee and M/s. Indo Shell Mould Ltd., the Tribunal held that transactions between the assessee and company are normal commercial transaction, which is outside scope of provisions of section 2(22)(e) of the Act. Therefore, considering facts and circumstances of the case and consistent with a view taken by the co-ordinate Bench, we are of the considered view that there is no error in the reasons given by the learned CIT(A) to delete additions made by the Assessing Officer towards deemed dividend under section 2(22)(e) of the Act. Hence, we are inclined to uphold findings of the learned CIT(A) and reject ground taken by the revenue.

9. The next issue that came up for our consideration from ground no.5 & 6 of revenue appeal is additions towards belated payment of employees contribution of PF & ESI u/s.36(1)(va) r.w.s 43B(b) of the I.T Act, 1961.

10. The learned A.R for the assessee submitted that this issue is squarely covered in favour of the assessee by the decision of the Hon'ble Jurisdictional High Court of Madras in the case of CIT Vs. M/s. Industrial Security & Intelligence India

Pvt. Ltd. in TCA. Nos.585 and 586 of 2015 dated 24.7.2015, where it was categorically held that employees contribution towards PF & ESI after due date under respective Act, but before due date of filing of return of income under Income Tax Act is allowable as deduction.

11. The learned DR fairly agreed that this issue is covered by the decision of the Hon'ble Jurisdictional High Court in the case of CIT Vs. M/s. Industrial Security & Intelligence India Pvt. Ltd (supra). However, he strongly supported order of the Assessing Officer in light of circular No.22 of 2015 dated 17.12.2015 and submitted that decision of the Hon'ble High Court of Madras is prior to issue of circular issued by CBDT and the Hon'ble High Court has no occasion to consider same and therefore, he submitted that issue is not squarely covered in favor of the assessee by the decision of the Hon'ble High Court of Madras and hence, there is no merit in the arguments of the assessee that issue is squarely covered in favour of the assessee.

12. We have heard both the parties, perused material available on record and gone through orders of the authorities below. The issue of deduction towards belated payment of

employees contribution to PF & ESI is no longer *res integra*. The various High Courts including the Hon'ble High Court of Madras in the case of CIT Vs. M/s. Industrial Security & Intelligence India Pvt. Ltd., in TCA No.585 & 586 of 2015 dated 24.07.2015 had considered an identical issue and held that belated payment of employees contribution to PF & ESI, after due date as prescribed in relevant Act, but before due date of filing return of income u/s.139(1) of the Income Tax Act, 1961 is allowable as deduction. This legal position has been reiterated by several High Courts including the Hon'ble Karnataka High Court in the case of M/s.Essae Teraoka Pvt.Ltd. Vs. DCIT (246 CTR 286) and the Hon'ble Rajasthan High Court in the case of CIT vs. State Bank of Bikaner & Jaipur (2014) 363 ITR 70 and the Hon'ble Bombay High Court in the case of CIT vs. Nipso Fabriks Ltd. (350 ITR 327). Further, the Hon'ble Supreme Court in the case of CIT vs. Rajasthan State Beverages Corporation Ltd. (2017) 250 Taxmann 16 has considered an identical issue while dismissing SLP filed by the Revenue and held that amount claimed on payment of PF & ESI having been deposited on or before due date of filing of returns, same could not be disallowed u/s.43B

or u/s.36(1)(va) of the Act. Insofar as circular No.22/2015 dated 17.12.2015 issued by the CBDT, we find that it has clarified allowabiity of employer's contribution to funds for welfare of the employees in terms of section 43B(b) of the Act and therefore, not relevant for considering employees contribution to the funds. Therefore, we are of the considered view that the Assessing Officer has erred in disallowing belated payment of employees con ribution to PF & ESI u/s.36(1)(va) of the Act. The learned CIT(A), after considering relevant facts, has rightly deleted additions made by the Assessing Officer. Therefore, we are inclined to uphold findings of the learned CIT(A) and reject ground taken by the revenue.

13. In the result, appeal filed by revenue is dismissed.

Order pronounced in the open court on 8th September, 2021

Sd/-	Sd/-
(वी. दुर्गा राव)	**(जी. मंजुनाथ)**
(V.Durga Rao)	(G.Manjunatha)
न्यायिक सदस्य /Judicial Member	लेखा सदस्य / Accountant Member

चेन्नई/Chennai,
दिनांक/Dated 8th September, 2021
DS

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. Appellant 2. Respondent 3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT 5. विभागीय प्रतिनिधि/DR 6. गार्ड फाईल/GF.